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Kansas City, Fort Scott and Gulf Railroad Company

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KANSAS CITY, FORT SCOTT AND GULF RAILROAD COMPANY.

MAY 6, 1886.—Committed to the Committee of the Whole House and ordered to be printed.

MR. PERKINS, from the Committee on Indian Affairs, submitted the following

REPORT:

[To accompany bill H. R. 7478.]

The Committee on Indian Affairs, to whom was referred the bill (H. R. 7478) to grant right of way to the Kansas City, Fort Scott and Gulf Railroad Company through the Indian Territory and for other purposes, having had the same under consideration, respectfully report:

The Kansas City, Fort Scott and Gulf Railroad Company was organized and incorporated under the laws of the State of Kansas, as recited in the bill. They have their line from Kansas City, Mo., to Memphis, Tenn., now completed and in full operation, and also from Kansas City, Mo., to Baxter Springs, Kans., and now ask Congress to grant them the right to construct and operate a railway, telegraph, and telephone through the Indian Territory, "beginning at a point to be selected by said railway company on the boundary line between said Territory and the State of Kansas south of the county of Labette, and thence to run southwestwardly to the south line of said Territory between the ninety-seventh and ninety-ninth degrees of longitude."

The Kansas City, Fort Scott and Gulf Railway Company is one of the most progressive and liberal companies in the West. It has at all times dealt fairly with its employés, with the people, and with its stockholders, and it is in the interest of commerce, good government, and rapidly-growing communities that this bill should pass, and this responsible and progressive company given the right to construct its road through the Indian Territory.

In the Forty-eighth Congress similar bills were passed, and as a part of this report the following is taken from a report made at such time by the Committee on Indian Affairs:

The right of eminent domain in the Federal Government over the Indian Territory is the principle on which the bill has been constructed. Its precedent is found in a law enacted by the Forty-seventh Congress, granting a similar right of way to the Saint Louis and San Francisco Railway Company.

The limitations which the bill now reported throws around the exercise of the right of eminent domain have been conformed, as far as circumstances would allow, to those provided by the laws of all the States where the same right is exercised by State authority within State limits. The rights of the Indians are fully protected, both in tribal and individual relations. Suitable provisions are made for the ascertainment and payment to the Indians of just and fair compensation for property taken from and damages done to them. Where the company and the respective tribes, or the company and individual occupants of the land fail to agree, a board of apprais-

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ers is constituted to determine the amounts of compensation, and if a tribe or individual occupant should be dissatisfied with the award of the appraisers, such tribe or occupant has substantially the same resort to the courts of the country that is allowed to the citizens of a State whose property under like circumstance is appropriated for public use. The details of the bill in this particular are believed by the committee to be appropriate and fully adequate to the purposes they contemplate. They protect fully and amply all the rights of the Indians.

The main questions presented by the bill are two:

First. Has Congress the power to grant the proposed right of way?

Second. Is there any necessity for the exercise of this power?

To both of these questions the committee make affirmative answers.

The power of Congress, as already stated, rests upon the right of eminent domain. That the Federal Government possesses this right over the Indian Territory it seems to the committee cannot be seriously questioned. The Indian Territory is a part of the United States and subject to its jurisdiction. This jurisdiction is now, and has been for a long number of years, exercised in a variety of ways.

The executive branch of the Government has its civil officers and agents located throughout the Territory. Postal routes permeate it as they do the States and other Territories. The Army occupies it. The judicial power of the Government is also extended over it in certain cases. In a word, whenever exigencies have required, the potential jurisdiction of the Government has been called into actual exercise. While existing laws allow to the tribes which occupy this country certain sorts of domestic or local government, there is nothing in the relations which these tribes sustain to the Federal Government which denies to the latter ultimate jurisdiction and sovereignty over them.

This proposition is abundantly established not only by the practice of the Government in the various instances cited, but also by an unbroken line of *judicial constructions*. Such jurisdiction and sovereignty embrace within their scope the right of eminent domain. So long as the Federal Government possesses this jurisdiction and sovereignty it must have the right also. No department or departments could divest the Government of this right, save and except by an absolute cession of the Territory to some foreign power.

The committee are equally convinced that there is a necessity for the exercise of the power.

The Indian Territory divides prosperous and growing States and Territories. On the west is New Mexico, on the north Colorado and Kansas, on the east Missouri and Arkansas, and on the south Texas. The rapidly increasing productions of these respective sections of country demand corresponding facilities for mutual exchanges. It is needless to add that in this age railroads alone furnish such facilities.

There is now but one line of railroad running north and south across the Indian Territory. This line of road has therefore a monopoly of transportation and travel in the directions indicated. The commercial and other national interests, not only of adjacent States but of the whole country, demand competing lines. Whenever private capital without Government aid proposes to meet this demand, it should be allowed to do so.

The conclusions of the committee on the two main questions which the bill presents may be clearly stated in one sentence, namely, that Congress has the power to grant rights of way through the Indian Territory, and that there is an occasion for the exercise of this power whenever private capital in *good faith* proposes to build a new road.

The committee therefore report the accompanying bill, and recommend its passage.